

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen DiFiore	Team: Squad #5	CCRB Case #: 202006932	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/27/2020 11:54 PM	Location of Incident: in front of § 87(2)(b)	Precinct: 75	18 Mo. SOL 3/27/2022	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 09/28/2020 12:39 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/19/2020 11:58 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Andre Ohara	09483	961031	075 PCT
2. SGT Daniel Berardi	00729	948658	075 PCT
3. POM Joseph Vigiano	19363	962152	075 PCT
4. POM Anthony Varrone	15385	961405	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Mccurry	20597	958897	075 PCT
2. POM Sean Collins	29210	954654	075 PCT
3. POM Michael Lagattolla	28165	955036	075 PCT
4. SGT Vincent Calderone	2981	936038	075 PCT
5. POM Gerard Duffy	27158	968385	075 PCT
6. POM Lester Haynes	7304	954922	075 PCT
7. POM Christophe Bracco	08029	963410	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Varrone	Abuse: Police Officer Anthony Varrone frisked § 87(2)(b)	
B.POM Anthony Varrone	Abuse: Police Officer Anthony Varrone searched § 87(2)(b)	
C.SGT Daniel Berardi	Abuse: Sergeant Daniel Berardi stopped § 87(2)(b)	
D.SGT Daniel Berardi	Abuse: Sergeant Daniel Berardi stopped § 87(2)(b)	
E.SGT Daniel Berardi	Abuse: Sergeant Daniel Berardi stopped § 87(2)(b)	
F.POM Anthony Varrone	Abuse: Police Officer Anthony Varrone searched § 87(2)(b)	
G.SGT Daniel Berardi	Abuse: Sergeant Daniel Berardi searched § 87(2)(b)	
H.POM Andre Ohara	Force: Police Officer Andre Ohara used physical force against § 87(2)(b)	
I.POM Andre Ohara	Abuse: Police Officer Andre Ohara seized § 87(2)(b) s property.	

Officer(s)	Allegation	Investigator Recommendation
J.POM Joseph Vigiano	Abuse: Police Officer Joseph Vigiano searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
K.SGT Daniel Berardi	Abuse: Sergeant Daniel Berardi failed to provide § 87(2)(b) with a business card.	
L.SGT Daniel Berardi	Abuse: Sergeant Daniel Berardi failed to provide § 87(2)(b) with a business card.	
M.SGT Daniel Berardi	Abuse: Sergeant Daniel Berardi failed to provide § 87(2)(b) with a business card.	

Case Summary

On September 28, 2020, § 87(2)(b) filed this complaint by phone with IAB, generating original log #2020-22648. The CCRB received the complaint on October 19, 2020.

On September 27, 2020, at approximately 11:54 p.m., § 87(2)(b) was sitting in her parked car outside 780 Livonia Avenue in Brooklyn. Her husband, § 87(2)(b) was standing beside the vehicle, smoking a marijuana blunt, and drinking an alcoholic beverage in a plastic cup. § 87(2)(b) brother, § 87(2)(b) was sitting in the backseat along with his partner, § 87(2)(b). There was additional marijuana and paraphernalia inside the vehicle. Sergeant Daniel Berardi and Police Officers Anthony Varrone and Joseph Vigiano of the 75th Precinct arrived, saw § 87(2)(b) smoking marijuana, and stopped him. PO Varrone frisked § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Varrone allegedly searched § 87(2)(b) (**Allegation B: Abuse of Authority**, § 87(2)(g)). Sgt. Berardi supervised as he and the other officers stopped § 87(2)(b) and § 87(2)(b) (**Allegations C-E: Abuse of Authority**, § 87(2)(g)). PO Varrone searched § 87(2)(b) and Sgt. Berardi allegedly searched § 87(2)(b) (**Allegations F-G: Abuse of Authority**, § 87(2)(g)). Multiple additional officers arrived on scene, including Police Officer Andre Ohara of the 75th Precinct. PO Ohara forcibly took § 87(2)(b) car keys from her after she refused to relinquish them (**Allegation H: Force**, § 87(2)(g)). **Allegation I: Abuse of Authority**, § 87(2)(g)). PO Vigiano searched § 87(2)(b) vehicle (**Allegation J: Abuse of Authority**, § 87(2)(g)). PO Vigiano issued a summons to § 87(2)(b) for unlawful possession of marijuana (*image of summons in memo book at BR 01*). At the conclusion of the incident, Sgt. Berardi did not provide business cards to § 87(2)(b) or § 87(2)(b) (**Allegations K-M: Abuse of Authority**, § 87(2)(g)).

The officers accidentally left the scene with § 87(2)(b) keys still in their vehicle, and Sgt. Berardi drove back and returned them after § 87(2)(b) realized and called the stationhouse and 911. Sgt. Berardi then reported that portion of the incident to IAB (BR30), which ultimately led to a concurrent investigation conducted by Patrol Borough Brooklyn North Investigations (see casefile at BR31).

The investigation obtained BWC footage (BR02-14, summarized in BR15). All references to video evidence in this report refer to the time stamp in the video player and not to any on-screen timestamps.

On March 6, 2021, this case was reassigned from Inv. Evan Tims to the undersigned after Inv. Tims' departure from the CCRB.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Anthony Varrone frisked § 87(2)(b).

Allegation (B) Abuse of Authority: Police Officer Anthony Varrone searched § 87(2)(b).

It is undisputed that § 87(2)(b) was standing beside an open door of § 87(2)(b) vehicle, smoking a marijuana blunt, and drinking an alcoholic beverage. It is undisputed that PO Varrone frisked § 87(2)(b).

§ 87(2)(b) provided testimony in a brief phone statement (BR33) and a formal interview (BR16). In his phone statement, he recounted that two officers searched his pockets at the same time. In his interview, however, he recounted that PO Varrone frisked and searched him, and he did not recount any other officer doing so. § 87(2)(b) testified that he had a bag containing a small amount of additional marijuana in one of his pockets, and that PO Varrone patted down the outside of his pockets before reaching in and removing the bag. § 87(2)(b) did not testify as to what, if anything else, he had in his pockets other than a bag of marijuana.

§ 87(2)(b) did not testify until more than eight months after the incident (BR17). He recounted that he did not see the officer who searched § 87(2)(b) but he maintained that he saw an officer pat down § 87(2)(b) upper torso, arms, and legs, and then enter the pockets of his jeans. § 87(2)(b) provided an initial phone statement (BR32), a formal interview (BR18), and answered follow-up questions in another phone call (BR34). She maintained that officers searched § 87(2)(b) but admitted that she did not see it take place. § 87(2)(b) did not testify until more than a year after the incident, and she did not remember seeing any officers approach § 87(2)(b) (BR19).

PO Varrone was not interviewed until more than 16 months after the incident (BR20). He recounted that § 87(2)(b) was wearing a t-shirt which hung long over his jeans, and that § 87(2)(b) leaned back when PO Varrone first approached him. § 87(2)(b) movement caused his shirt to pull back against his torso, and PO Varrone saw a “clear line” which ran horizontally at the front of § 87(2)(b) waistband. PO Varrone thought what he was seeing might have been the outline of the handle or grip of a handgun, such that it would have been carried in § 87(2)(b) waistband with the barrel pointing straight down. PO Varrone could not recall the dimensions of the outline, beyond noting that it was not a “huge bulge,” but he emphasized that it was very apparent and defined. PO Varrone also noted that he had previously recovered firearms carried in that manner, and that he himself has carried a gun in that location. PO Varrone stood behind § 87(2)(b) and felt that front area of § 87(2)(b) waistband, and he determined that § 87(2)(b) was wearing a belt. By the time of his CCRB interview, PO Varrone could not recall if he determined what exactly caused the outline he saw, such as if it had been caused by a belt buckle.

As PO Varrone frisked the front of § 87(2)(b) waistband, he saw the outline of a “heavy” object in one of § 87(2)(b) pants pockets. The object appeared to be “weighted down” in the pocket and appeared to come to a point toward the bottom. PO Varrone thought the outline could have been a gun with its barrel pointed downward in the pocket. He felt the outside of the pocket. He could not determine what was in the pocket based upon feeling it, but he felt enough to determine that it was not a firearm. PO Varrone denied that he searched § 87(2)(b) and denied recovering a bag of marijuana from him.

PO Varrone’s BWC footage (BR02, beginning at 01:00) captured his initial interaction with § 87(2)(b). The footage does not provide a sufficiently detailed view to determine whether PO Varrone saw the specific outlines of objects he described in his testimony. The footage confirms that § 87(2)(b) was wearing a long t-shirt which fell well below his waistband. The footage does not provide a comprehensive view of the frisk, but PO Varrone’s actions appear largely consistent with his testimony regarding the specific areas he frisked, and he does not appear to conduct the type of full-body frisk described by § 87(2)(b). PO Varrone’s hands are not visible the entire time, but he does not appear to enter any of § 87(2)(b) pockets, and he certainly does not remove a bag of marijuana from § 87(2)(b).

Sgt. Berardi’s BWC footage (BR03) and PO Vigiano’s BWC footage (BR04) did not provide a better view of the frisk or of § 87(2)(b) waistband and pocket at the time PO Varrone approached him. Sgt. Berardi also was not interviewed until approximately 16 months after the incident, and he did not recall if any officer frisked or searched § 87(2)(b) (BR21). Sgt. Berardi’s BWC footage shows that he was on the opposite of the vehicle at the time and did not have good view of PO Varrone’s interaction with § 87(2)(b).

PO Vigiano ultimately issued a summons to § 87(2)(b) for marijuana possession. He confiscated the half-smoked blunt and photographed it (see memo book at BR01). There is no record of any officer having confiscated additional unsmoked marijuana in a bag.

§ 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 212-11 (BR35) dictates that an officer may frisk a civilian when he develops reasonable suspicion that the person is armed. Such suspicion may arise from an officer seeing something on the civilian’s person which he reasonably suspects is a weapon.

§ 87(2)(b), § 87(2)(g)

Allegation (C) Abuse of Authority: Sergeant Daniel Berardi stopped § 87(2)(b)

Allegation (D) Abuse of Authority: Sergeant Daniel Berardi stopped § 87(2)(b)

Allegation (E) Abuse of Authority: Sergeant Daniel Berardi stopped § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Anthony Varrone searched § 87(2)(b)

Allegation (G) Abuse of Authority: Sergeant Daniel Berardi searched § 87(2)(b)

Allegation (J) Abuse of Authority: Police Officer Joseph Vigiano searched the vehicle in which § 87(2)(b) **and** § 87(2)(b) **were occupants.**

It is undisputed that Sgt. Berardi supervised the process of officers removing § 87(2)(b) and § 87(2)(b) from the vehicle. As a result, the stop allegations are pleaded against him. It is further undisputed that PO Varrone searched § 87(2)(b) and that PO Vigiano searched the vehicle. Although at least one of the civilians alleged that numerous officers searched the car, the BWC footage shows that only PO Vigiano did so, and thus that allegation is pleaded solely against him.

The civilians provided conflicting testimony regarding whether there was any marijuana inside the vehicle and whether the vehicle smelled of marijuana. § 87(2)(b) acknowledged that there was a bag of marijuana in the backseat near § 87(2)(b) and that officers remarked upon seeing it, but she said the bag was closed and she denied that the vehicle smelled of marijuana. She also denied that any officer ever mentioned such an odor. § 87(2)(b) testified that there was a marijuana grinder in the car and that an officer remarked upon it. § 87(2)(b) acknowledged that he had marijuana in his lap that he was preparing to smoke when the officers arrived. § 87(2)(b) denied that the officers ever mentioned that they smelled marijuana and denied that the car smelled like marijuana. She further denied that anyone in the car had recently smoked marijuana.

§ 87(2)(b) also alleged that Sgt. Berardi instructed her to remove her fanny pack and then searched it.

PO Varrone testified that he saw the marijuana grinder in plain view in the door pocket of the open vehicle door, and that he smelled an odor of marijuana emanating from the vehicle. He specified that he still smelled this odor after § 87(2)(b) had walked away from him, so he thought the smell was not just emanating from § 87(2)(b) blunt. Sgt. Berardi also testified to smelling the odor. He also recalled seeing marijuana and paraphernalia in the car, but he could not recall in greater detail by the time of his interview. PO Varrone's BWC shows an officer mentioning an "odor of marijuana" (BR 02, at approximately 07:31).

Sgt. Berardi's BWC footage (BR03, at 07:20) and PO Vigiano's BWC footage (BR04, at 07:00) show him having § 87(2)(b) remove her fanny pack and leave it in the vehicle. The footage does not appear to show Sgt. Berardi searching § 87(2)(b) or her fanny pack, but the footage is not comprehensive.

As noted above, PO Vigiano issued a summons to § 87(2)(b). Sgt. Berardi testified that the officers used their discretion not to issue summonses to any of the other civilians.

The evidence clearly indicated that there was a quantity of marijuana inside § 87(2)(b) vehicle. As a result, the investigation credited that the officers smelled an odor of marijuana emanating from the vehicle. The investigation could not determine if Sgt. Berardi searched § 87(2)(b).

An officer may conduct a warrantless search of a vehicle and its occupants if that officer detects the odor of marijuana smoke or the general odor of marijuana. *People v. Chestnut*, 43 A.D.2d 260 (1974) (BR22); *People v. Smith*, 66 A.D.3d 514 (2009) (BR36) (in effect at the time of this

incident).

§ 87(2)(b), § 87(2)(g)

Allegation (H) Force: Police Officer Andre Ohara used physical force against § 87(2)(b)

Allegation (I) Abuse of Authority: Police Officer Andre Ohara seized § 87(2)(b)'s property.

It is undisputed that § 87(2)(b) refused to give her car keys to PO Ohara, that he used a degree of force in order to remove them from her hand, and that she “fought” and physically resisted his attempt. The exact manner of force PO Ohara used remains in dispute.

§ 87(2)(b) recounted that she tried to give her keys to a bystander when the officers ordered her out of the car, and that PO Ohara told her the officers needed the keys as part of their “investigation.” § 87(2)(b) turned away from PO Ohara, and he pushed her “hard” against the car such that her stomach struck the car. § 87(2)(b) was pregnant at the time. § 87(2)(b) did not feel any pain at that point. PO Ohara pressed his body against her back for approximately one minute while trying to get her keys. PO Ohara kept yanking at the keys while § 87(2)(b) held onto them tightly.

§ 87(2)(b) similarly alleged that PO Ohara pushed her against the car with his whole body such that her stomach hit the car with force, and then PO Ohara used his body to press her against the car while grabbing her hands. § 87(2)(b) alleged that PO Ohara pushed § 87(2)(b) stomach-first into the car and twisted her arm behind her back. § 87(2)(b) claimed that PO Ohara pinned her against her car and pushed her head and shoulders down toward the trunk of the car.

§ 87(2)(b) called for an ambulance approximately an hour after the incident due to stomach cramps, and she spent a couple hours at the hospital. She did not suffer any visible bruising. She initially said that one of her fingernails was damaged in an altercation with § 87(2)(b) several days prior, and that the nail completely fell off during the struggle with PO Ohara. However, she later explained that she was merely referring to an acrylic nail, and that she did not suffer an injury to her finger.

PO Varrone’s BWC footage provided a clear view of PO Ohara’s interaction with § 87(2)(b) (BR02, at approximately 05:40). She turns away from him and walks up against her car as he tries to take her keys. PO Ohara stands behind her such that she is in between PO Ohara and her car. While standing behind her, he reaches around her body and finally pulls the keys out of her hand at 06:07. At no point does PO Ohara shove § 87(2)(b) against the car, hold her against the car, twist her arm behind her back, or force her head or shoulders down toward the body of the car. BWC also shows that PO Vigiano later needed to use the car keys to open the vehicle’s trunk while he searched it.

It was not necessary to interview PO Ohara to reach a disposition for this allegation.

Patrol Guide Procedure 221-01 states, “Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances” (BR23).

§ 87(2)(b), § 87(2)(g)

Allegation (K) Abuse of Authority: Sergeant Daniel Berardi failed to provide § 87(2)(b) with a business card.

Allegation (L) Abuse of Authority: Sergeant Daniel Berardi failed to provide § 87(2)(b) with a business card.

Allegation (M) Abuse of Authority: Sergeant Daniel Berardi failed to provide § 87(2)(b) with a business card.

As Sgt. Berardi supervised and took part in the stops of all three individuals, the search of § 87(2)(b) and the search of the vehicle, these allegations are pleaded solely against him.

Both § 87(2)(b) and § 87(2)(b) testified that no officer offered them a business card. § 87(2)(b) also testified that no officer offered a business card to any of the civilians. § 87(2)(b) and § 87(2)(b) did not testify specifically about this allegation, though neither reported receiving a business card or seeing anyone else receive one.

Sgt. Berardi initially denied that he provided a business card and explained that one would not have been required because the officers issued a summons as a result of the incident. However, he later confirmed that the nature of the incident would have required officers to provide business cards to the civilians who did not receive summonses. He could not recall if he or any other officer provided business cards to the civilians who did not receive summonses. He testified that none of the civilians ever requested a card.

Sgt. Berardi's BWC footage ends before he has left the scene entirely, but it captures the bulk of the incident and does not show him ever offering or providing a business card to anyone. None of the other BWC footage showed any officer providing a business card.

§ 87(2)(g)

New York City Administrative Code 14-174 (BR37) and Patrol Guide Procedure 203-09 (*in effect at the time of the incident*) (BR24) require officers to proactively offer business cards to any civilian whom they stop or frisk, and to civilians whose vehicles they search, when those civilians are not arrested or issued a summons. An officer need not provide a card when "exigent circumstances require immediate action by such officer," such as physical resistance, flight, imminent danger of physical injury or damage to property.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(b) have been a party (BR25).
- Sgt. Berardi has been a member of the NYPD for 11 years and has been a subject in nine other CCRB complaints and 24 allegations, none of which were substantiated. Sgt. Berardi is currently a subject in four other complaints and 11 allegations. § 87(2)(g)
- PO Varrone has been a member of the NYPD for six years and has been a subject in two other CCRB complaints and six allegations, none of which were substantiated. PO Varrone is currently a subject in one other complaint and five other allegations. The investigation into this complaint is ongoing. § 87(2)(g)
- PO Ohara has been a member of the NYPD for six years and has been a subject in nine prior CCRB complaints and 24 prior allegations, of which two were substantiated:

